

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GARY ATKINSON,

Plaintiff,

v.

**INTERNAL REVENUE SERVICE
PHILADELPHIA BRANCH,**

Defendant.

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**CIVIL ACTION
No. 21-4111**

MEMORANDUM

Kenney, J.

February 10, 2023

Defendant Internal Revenue Service, Philadelphia Branch (“Defendant”) moves to dismiss the remaining claims of Plaintiff Gary Atkinson’s (“Plaintiff”) for lack of subject matter jurisdiction. ECF No. 27. For the reasons set forth below, Defendant’s Motion to Dismiss is granted and all claims against Defendant are dismissed with prejudice. An appropriate Order will follow.

Plaintiff Gary Atkinson filed a complaint on September 14, 2021, seeking payment of \$3,200 for CARES Act Economic Impact Payments (EIPs). ECF No. 1. Plaintiff alleged that he filed a Form 1040 on which he claimed EIP 1 (\$1,200) and EIP 2 (\$600) for tax year 2020, and EIP 3 (\$1,400) for tax year 2021, and that the IRS failed to process these amounts. ECF No. 1. On August 9, 2022, this court granted Defendant’s partial motion to dismiss for lack of subject matter jurisdiction as to tax year 2021 in the amount of \$1,400 (EIP 3). ECF No. 21.

Defendant filed the instant Motion to Dismiss on December 22, 2022. Plaintiff has not filed a response to this Motion. When a plaintiff proceeds *pro se* and does not respond to a motion to dismiss, a merits analysis is appropriate in determining whether to grant the motion. See *Gary v. Pennsylvania Hum. Rels. Comm’n*, 497 F. App’x 223 (3d Cir. 2012); see also

Stackhouse v. Mazurkiewicz, 951 F.2d 29 (3d Cir.1991). Here, Defendant avers that Defendant issued to Plaintiff the payment that Plaintiff sought for tax year 2020. ECF No. 27-1 at 1. Defendant has attached receipt of this payment. ECF No. 27-2. Accordingly, Plaintiff's suit is now moot.

Therefore, the Motion to Dismiss (ECF No. 27) is granted and this suit is dismissed with prejudice.

BY THE COURT:

/s/ Chad F. Kenney

CHAD F. KENNEY, JUDGE